Sefton v. Eyeblaster, Inc et al Doc. 1

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED
NOV 3 2006
MICHAEL N. MILBY, CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID SEFTON,	§	
	§	**H-06-3484**
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO.** ________________
	§	
	§	**(State Court Case No. 2006-64441)**
EYEBLASTER, INC., and	§	
JOHN DOES 1-10,	§	
	§	
Defendants.	§	

NOTICE OF REMOVAL

Defendant Eyeblaster, Inc. ("EI") submits to the Court this Notice of Removal, removing this action from the 129th Judicial District Court of Harris County, Texas, where it is now pending, to the United States District Court for the Southern District of Texas, Houston Division. In support of this Notice of Removal, EI states as follows:

1. By the filing of an "Original Petition and Application for Temporary Restraining Order and Injunctive Relief" on October 9, 2006 (hereinafter "the Petition"), plaintiff commenced a civil action against defendant EI in the 129th Judicial District Court of Harris County, Texas, entitled David Sefton v. Eyeblaster Inc., and John Does 1-10, Cause Number 2006-64441 ("the State Court Action"). Pursuant to Local Rule 81, true and correct copies of the following documents filed in the State Court Action are attached hereto:

Exhibit A: An index of matters being filed;

Exhibit B: All executed process in the case;

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Exhibit C: The Petition, which is the only pleading filed with the state court asserting causes of action;

Exhibit D: The docket sheet; and

Exhibit E: A list of all counsel of record, including addresses, telephone numbers and parties represented.

2. As shown by Exhibit B, a copy of the Petition was served by an unidentified process server on C.T. Corporation in Houston, Texas, on October 12, 2006. C.T. Corporation is defendant's agent for service of process in this state.

3. The State Court Action is a civil action which may be removed to this Court pursuant to 28 U.S.C. § 1441 *et seq*. This Court has original jurisdiction over the action pursuant to 28 U.S.C. § 1332 in that:

(a) Plaintiff was at the time this action was commenced, and is at the present time, an individual who is a citizen of the State of Texas, with the Petition alleging that he is a resident of Travis County, Texas;

(b) As shown by the Declaration of Yoav Arnstein attached hereto as Exhibit F, Defendant EI was at the time this action was commenced, and is at the present time, a corporation organized under the laws of the State of Delaware, with its principal place of business in the State of New York, and, therefore, is not a citizen of the State of Texas;

(c) The anonymous defendants, which are named "John Does 1-10," are alleged to be "the clients of [EI] who conspired with [EI] to infect Plaintiff's computer with spyware." As such, they are nominal defendants who are not considered for purposes of federal diversity jurisdiction; and

(d) It is facially apparent from the allegations in the Petition that the amount in controversy exceeds the sum of $75,000, exclusive of interest and costs.

5. All conditions and procedures for removal have been satisfied.

6. A filing fee of $350.00 has been tendered to the Clerk of the United States District Court for the Southern District of Texas, Houston Division.

7. EI has given written notice of the filing of this Notice of Removal to Plaintiff and will file a Notification of Removal with the Clerk of the 129th Judicial District Court of Harris County, Texas.

8. Accordingly, EI removes the action now pending in the 129th Judicial District Court of Harris County, Texas under Cause No. 2006-64441 to this Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel for Plaintiff, Dan Krocker, 710 North Post Oak Road, Suite 400, Houston, Texas 77024, by hand delivery, on this 3rd day of November, 2006.

GUY S. LIPE